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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re SARAH O., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

PATRICK O. et al.,

Defendants and Appellants.

B217654

(Los Angeles County
Super. Ct. No. CK65116)

APPEALS from an order of the Superior Court of Los Angeles County,
Stephen Marpet, Juvenile Court Referee. Appeal dismissed, and order affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant Patrick O.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and
Appellant Michelle O.

Office of the Los Angeles County Counsel, James M. Owens, Assistant
County Counsel and Melinda S. White-Svec, Deputy County Counsel for Plaintiff
and Respondent.

Father Patrick O. appeals from the juvenile court order terminating parental rights as to his daughter, Sarah. We find no error and affirm the order.

Mother Michelle O. also appeals from this order. Counsel appointed to represent mother on appeal submitted a letter to the court stating an inability to find any arguable issues. Mother then submitted a letter to the court seeking relief from the order, but failed to make a showing of good cause that an arguable issue does, in fact exist. For this reason, we shall dismiss her appeal. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 845-846.)

FACTUAL AND PROCEDURAL SUMMARY

Sarah was detained from her parents just after her birth in September 2006. The dependency petition filed pursuant to Welfare and Institutions Code section 300 (all statutory references are to this code) alleged that the parents had numerous mental and emotional problems and had engaged in domestic violence. The parents received psychiatric evaluations, and the evaluator found a significant risk of emotional abuse to the child based on the parents' problems. In April 2007, the petition was sustained and reunification services were ordered for both parents. Sarah was placed in foster care with a maternal cousin in May 2007, where she remains. The parents participated in various programs and had monitored visitation with Sarah, but the domestic violence continued. In March 2008, mother left father and moved into her parents' home. She also obtained a restraining order against father, based on his physical and emotional abuse. At the review hearing in January 2009, the court found there was still a substantial risk of harm in returning the child to her parents' custody. The court terminated reunification services and set the case for a section 366.26 permanency planning hearing. Mother sought review of this order, which we denied in a nonpublished opinion, *M.O. v. Superior Court* (June 12, 2009, B214102).

The social worker's May 2009 report for the section 366.26 hearing indicated that the foster mother was anxious and willing to adopt Sarah and had an

approved adoption homestudy. She provided Sarah with a nurturing and loving environment, and Sarah appeared to be bonded and attached to her.

Mother continued to have regular monitored visitation with Sarah, but “[t]he child’s bond with the mother appears to be minimal.” The social worker’s June 2009 report described two visits mother had with Sarah. Sarah interacted with mother, but did not show any close attachment to her. Although mother often touched the child to show affection, Sarah did not display affection to mother, nor did she initiate any physical contact with mother. When mother tried to initiate communication, Sarah made minimal eye contact, and gave only “yes” or “no” answers.

Father also had regular monitored visitation, but he made frequent complaints that his visits were thwarted by the foster mother, or that the child controlled visits by getting upset and refusing to be consoled by him, causing the visit to be terminated early. Father reportedly expected the foster parent to facilitate all visitation, without regard to the strain the lengthy travel from Lancaster to Los Angeles placed on the foster parent and on Sarah. The social worker considered the bonding between father and Sarah to be minimal.

Mother and father each filed a request for change of court order, pursuant to section 388, seeking reinstatement of reunification services, liberalized visitation, and eventual return of the child. Father’s request was denied without a hearing; mother’s was denied after a hearing.

The court then proceeded to the permanency planning hearing. Father testified about his visits with Sarah and the quality of their relationship. Mother’s testimony from the section 388 hearing was incorporated, as was the testimony of the foster mother. The court found that Sarah was likely to be adopted, and that the parents’ relationship with her did not rise to the level that would satisfy the exception to the statutory preference for adoption. The court selected adoption as the permanent plan and terminated parental rights. Father filed a timely appeal from this order.

DISCUSSION

Father claims the juvenile court erred in finding the section 366.26, subdivision (c)(1)(B)(i) “benefit exception” to termination of parental rights inapplicable in this case.

When a child cannot be returned to his or her parent, if the court finds that the child is likely to be adopted, it must select adoption as the permanent plan unless it finds that termination of parental rights would be detrimental to the child under one of the statutory exceptions to section 366.26. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) Under the benefit exception, the court need not terminate parental rights if it finds “a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

To meet this burden, father had to show that his relationship with Sarah promotes her well-being to such a degree as to outweigh the well-being she would gain in a permanent home with her prospective adoptive parent. (*In re Derek W.*, *supra*, 73 Cal.App.4th at pp. 826-827.) The court must balance “the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The parent must show more than frequent and loving contact with the child, or an emotional bond, or that the parent and child find their visits pleasant. (*In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827.)

The first prong of the benefit exception was satisfied. Father had regular and generally consistent visitation with Sarah during the 2-1/2 years of this

dependency case. The problem is with the second prong, the benefit to the child from continuing the parental contact.

Father's visits never progressed from monitored to unmonitored. At the time of the hearing, father was visiting Sarah at her daycare facility twice a week, for two hours each time. Father testified that he brought toys to the visits, and snacks or meals. According to him, the visits "are great. There is a lot of playtime, a lot of questions, a lot of that she wants to show me her toys, everything." He testified that during a typical visit, they would engage in some pretend cooking, dig in the garden, play in the yard. Sarah would ask him questions about the squirrels, he would read to her, and he would push her around on a power-wheel vehicle. He would have occasion to redirect Sarah during a visit about her interaction with other children, or when she chased squirrels. He also testified that Sarah would look to him for comfort when she was afraid.

Asked about Sarah's reaction to his visits, father explained that when he arrives for a visit, Sarah often runs to the door and "can't wait" until her jacket is put on so she can go outside to see him. She seems to know when the two-hour visit is nearing its end and goes inside. According to father, when there has been an extended period between visits, Sarah wants him to stay longer. Father testified that Sarah looks forward to his visits, and that "she makes it very well known when I'm there. She asks me to bring stuff and tells me to come soon."

The court also heard testimony from the foster mother, who has been caring for Sarah since the start of the dependency case. According to her, Sarah never asks for father between visits. "It is the contrary. I'll ask her if she saw Daddy Patrick, and she will tell me, no no no."

The social worker's report described the level of bonding between father and Sarah as "minimal" and noted that during some visits, father had been unable to console the child, who kept calling for her foster mother. The social worker also noted that Sarah was thriving in her foster home, where she has lived since

May 2007 with her prospective adoptive mother. “The child is observed to have a very strong bond with this relative.”

Father’s interaction with Sarah may well confer some benefit to her. But he has not shown that he and Sarah have such a strong and beneficial parent-child relationship that she will suffer detriment from its termination. Substantial evidence supports the juvenile court’s determination that the benefit exception of section 366.26, subdivision (c)(1)(B)(i) is not applicable.

DISPOSITION

Mother’s appeal is dismissed and the order terminating parental rights is affirmed.

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EPSTEIN, P.J.

We concur:

WILLHITE, J.

SUZUKAWA, J.